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ARIZONA ATTORNEY GENERAL

December 13, 1984

Hon. Peter Goudinoff
Arizona State Representative
House Wing, State Capitol
1700 West Washington
Phoenix, AZ 85007

Re: I84-173 (R84-191)

Dear Representative Goudinoff:

You have asked whether Laws 1984 (1st Reg. Sess.), Ch. 12 (Chapter 12) is constitutional in reducing both the employer and employee contributions to the Arizona State Retirement System (System)^{1/} and in making both the employee (participant) and employer contributions dependent upon a determination by the System's actuary of the level of funding appropriate to support the benefits provided by the System. Your concern was triggered by a recent decision of the California Court of Appeals, California Teachers Ass'n. v. Cory, 155 Cal.App.3d 494, 202 Cal. Rptr. 611 (1984), which held that a retroactive reduction in employer contributions to the California Teachers Retirement System constituted an unconstitutional impairment of contract and was therefore invalid. For the reasons set forth below,

1. Chapter 12 provides, inter alia, that employer and employee contributions will be reduced from 7% to 6.27% for the period from July 1, 1984, through June 30, 1985.

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we conclude that Chapter 12 is not unconstitutional as an impairment of contract.

Cory is premised upon two significant facts not present in the Arizona System. First, it is based upon specific legislation enacted by the California legislature in 1979. That legislation required that, at a minimum, the sum of \$144 million was to be appropriated each year to the California Teachers Retirement Fund beginning July 1, 1980. That amount would be increased or decreased depending upon the California consumer price index. An additional amount would be added through June 30, 1995, based upon a table of funding beginning with a \$10 million additional for the fiscal year ending June 30, 1981, and increasing in approximately \$20 million dollar increments each year until \$280 million dollars would be added in the fiscal year ending June 30, 1995.

Because the California legislature had committed to fund the Teachers Retirement System in a particular amount each year through June 30, 1995, the court in Cory concluded that the Governor's veto of appropriations to the California Teachers Retirement Fund constituted an impairment of the contract between the teachers and their employers. The court's conclusion was premised on the fact that the legislature had already promised to contribute a specific amount of dollars to the fund for a substantial period of time. Generally, see Cory, 202 Cal. Rptr. at 615 and particularly n. 4.

Unlike California there is no equivalent Arizona statute that requires that employer and employee contributions be made in a specific dollar amount to the Arizona System. The Arizona System has always been funded through contributions based upon a certain percentage of the employee's salary and such funding will continue as a percentage of employee's salary, though based upon an actuarial calculation of the amount necessary to properly fund the System.

Second, the Teachers Retirement System in California "has always had a significant unfunded liability." Cory, 202 Cal. Rptr. at 614, n. 2. Based upon this fact, the California Court of Appeals concluded:

Interpreting the contract [requiring a dollar amount certain of contributions] to permit alteration at will would entirely defeat the

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bargain to provide some assurance that monies
will be available to fund the pension when due.
(Emphasis added).

Cory, 202 Cal. Rptr. at 620 (emphasis added).

By contrast, the Arizona System historically has had and continues to have a small unfunded liability. For the fiscal year which ended June 30, 1984, the net assets of the Arizona System as a percentage of liability totalled 92.8%. The funded liability has risen on an almost continual basis since 1976.^{2/}

Cory reaches a different result because it addresses a retirement system which is factually distinguishable from the Arizona State Retirement System. However, we note that the court's analysis in Cory is not inconsistent with the reasoning of the Arizona Supreme Court in Yeazell v. Copins, 98 Ariz. 109, 402 P.2d 541, 546 (1965) that:

Nor may the legislature reduce the amount of the contributions to the fund if thereby the soundness of the fund is jeopardized.

It is certain that the Legislature's reduction of contributions from 7% to 6.27% for 1984-85 and the formula for future years' contributions to the Arizona System enacted by Chapter 12 do not jeopardize the soundness of the fund. In Yeazell v. Copins the court prohibited the reduction of

2. The funded liability of the System on June 30 of each year was as follows:

1976	-	75.9%	1980	-	78.8%
1977	-	76.5%	1981	-	84.5%
1978	-	72.0%	1982	-	82.7%
1979	-	75.6%	1983	-	90.2%

The net assets of the Arizona System as of June 30, 1984 totaled almost \$3.2 billion with an unfunded liability of less than \$248 million dollars. Therefore, less than 8% of the System's liability was unfunded as of that date.

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retirement benefits without an employee's consent or waiver,^{3/}
based upon a contractual impairment theory.^{4/} The recent
legislative amendments reducing the contributions to the System
do not affect the obligation of contract existing between the
employees and their employers respecting the retirement benefits
to which the employees are entitled.

Sincerely,

Bob Corbin

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BC/DR/sr

3. The only benefit affected by the reduction in employee contributions is the death benefit provided for in A.R.S. § 38-781.11 of "two times the participant's contribution to the plan." However, no particular dollar amount is guaranteed as a death benefit so no term of the employee's contract with the employer is breached. In addition, there is an equitable trade off of more take-home pay now for less death benefits in the future.

4. See the analysis in Ariz.Atty.Gen.Op. 184-039.